

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

**IN RE PHARMACEUTICAL INDUSTRY** ) **MDL No. 1456**  
**AVERAGE WHOLESALE PRICE LITIGATION** ) **Master File No. 01-12257-PBS**  
 ) **Subcategory Case No. 06-11337**  
 )  
 ) **Judge Patti B. Saris**  
**THIS DOCUMENT RELATES TO:** )  
*State of California, ex rel. Ven-A-Care of the* )  
*Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.* )  
Case No: 03-cv-11226-PBS )  
 )

---

**STATUS REPORT - October 29, 2010**

The undersigned counsel, on behalf of plaintiff State of California, hereby submits the attached Status Report in accordance with the Court's June 17, 2004 Procedural Order.

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General for the State of California

Dated: October 29, 2010

By: /s/ Nicholas N. Paul  
NICHOLAS N. PAUL  
CA State Bar No: 190605  
Supervising Deputy Attorney General  
Bureau of Medi-Cal Fraud and Elder Abuse  
Office of the Attorney General  
San Diego, California 92108  
Tel: (619) 688-6099  
Fax: (619) 688-4200

**Attorneys for Plaintiff,  
STATE OF CALIFORNIA**

**MDL 1456 Status Report**

**State of California, ex rel. Ven-A-Care v. Abbott Laboratories Inc., et al.**  
**Case No.: 1:03-cv-11226-PBS**

**First Amended Complaint in Intervention**

Plaintiffs filed a First Amended Complaint in Intervention (FAC), with redacted exhibits, on August 25, 2005. (Master File 01-12257, Docket No. 1679). Plaintiffs also filed a motion for leave to file unredacted Exhibits under seal (Exhibits A-K and Exhibits M-R to the FAC), (Master File 01-12257, Docket Nos. 1680, 1703), which the Court granted via electronic order.

**Motions to Dismiss**

On January 17, 2006, Defendants filed a Joint Motion to Dismiss Plaintiffs' First Amended Complaint in Intervention. (Master File 01-12257, Docket Nos. 2047, 2051.)

On March 22, 2007, the Court denied in part and granted in part Defendants' joint motion to dismiss, and denied Abbott's individual motion to dismiss. (Master File 01-12257, Docket No. 3948.)

**Case Management Order (CMO)**

The Court entered Case Management Order 31 on August 1, 2007. (Master File 01-12257, Docket No. 4586.) Case Management Order 35 was entered on November 4, 2008. (Master File 01-12257, Docket No. 5664.) Pursuant to the Court's request, on February 20, 2009, the parties filed a Joint Motion for Entry of Proposed Amendment to Case Management Order No. 31. (Master File 01-12257, Docket No. 5920; Subcategory File 06-11337, Docket No. 182.) The motion and amended CMO were granted by the Court on March 4, 2009. (Master File 01-12257, Docket No. 5942; Subcategory File 06-11337, Docket No. 186.)

The parties filed a Joint Motion to Set Revised Briefing Schedule for Motions for Summary Judgment and Amend CMO 31 on October 16, 2009, (Master File 01-12257, Docket

No. 6597; Subcategory File 06-11337, Docket No. 497), which the Court granted on October 28, 2009.

**Alternative Dispute Resolution**

The parties engaged in mediation with Eric Green in April 2009, with negative results. No further mediation is presently scheduled.

**Pending Matters**

**Discovery Motions:**

On August 21, 2009, Defendants filed their Motion for an Order Granting Leave to Take Deposition Out of Time, seeking to take the deposition of Thomas Ahrens after the discovery cut-off date of June 15, 2009. (Master File 01-12257, Docket No. 6394; Subcategory File 06-11337, Docket No. 376.) Also on August 21, 2009, Defendant Sandoz Inc. filed its Motion to Determine the Sufficiency of Plaintiff State of California's Response to Sandoz Inc.'s First Set of Requests for Admission. (Master File 01-12257, Docket No. 6392; Subcategory File 06-11337, Docket No. 373.) Plaintiff filed its oppositions to Defendants' motions on September 4, 2009 (Master File 01-12257, Docket Nos. 6480, 6482; Subcategory File 06-11337, Docket Nos. 436-437.)

No hearing has been set and no orders have been issued on these motions.

**Summary Judgment Motions:**

On November 24, 2009, Plaintiffs filed a Motion for Partial Summary Judgment. (Master File 01-12257, Docket No. 6685-92, 6714-15; Subcategory File 06-11337, Docket No. 547-554, 573, 575.)

On November 25, 2009, Defendants filed a Joint Motion for Partial Summary Judgment. (Master File 01-12257, Docket No. 6702-6703, 6710; Subcategory File 06-11337, Docket No.

563-565.) Defendants also filed three individual Motions for Summary Judgment on November 25, 2009. (Master File 01-12257, Docket Nos. 6694-98, 6699, 6700, 6704-6705, 6707-6708, 6709, 6711; Subcategory File 06-11337, Docket Nos. 555-559, 560, 562, 565, 567-571.)

On December 21, 2009, Plaintiffs filed their opposition briefs to Defendants' joint and individual Motions for Partial Summary Judgment. (Master File 01-12257, Docket Nos. 6779-92; Subcategory File 06-11337, Docket Nos. 615-628.) Defendants also filed their opposition to Plaintiffs' Joint Motion for Partial Summary Judgment (Master File 01-12257, Docket Nos. 6793-6801; Subcategory File 06-11337, Docket Nos. 629-637.)

On January 15, 2010, Plaintiffs filed their reply in support of their Motion for Partial Summary Judgment. (Master File 01-12257, Docket No. 6842; Subcategory File 06-11337 Docket No. 650.) Relator, Ven-A-Care of the Florida Keys, Inc., filed a separate Reply to Defendants' Joint Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment. (Master File 01-12257, Docket No. 6843; Subcategory File 06-11337, Docket No. 659.)

Also, on January 15, 2010, Defendants filed their reply briefs in support of their joint and individual motions for partial summary judgment. (Master File 01-12257, Docket Nos. 6837-41, 6844-48; Subcategory File 06-11337, Docket No. 648-649, 652-658.)

On January 29, 2010, Plaintiffs filed their sur-reply briefs in opposition to Defendants' joint and individual motions for partial summary judgment. (Master File 01-12257, Docket Nos. 6872-76, 6878; Subcategory File 06-11337, Docket Nos. 668-673.) Defendants also filed their sur-reply in opposition to Plaintiffs' motion for partial summary judgment. (Master File 01-12257, Docket Nos. 6877, 6879; Subcategory File 06-11337, Docket Nos. 674-675.)

Plaintiffs' and Defendants' motions for summary judgment are set for hearing on November 17, 2010.

**Miscellaneous Motion(s):**

Defendants filed a Motion for Remand November 25, 2009. (Master File 01-12257, Docket No. 6701; Subcategory File 06-11337, Docket No. 561.) Plaintiffs filed their opposition to the motion on December 9, 2009. (Master File 01-12257, Docket No. 6749; Subcategory File 06-11337, Docket No. 596.)

This motion is set for hearing on November 17, 2010.

**CERTIFICATE OF SERVICE**

I, Nicholas N. Paul, hereby certify that on October 29, 2010, I caused a true and correct copy of the foregoing, **Status Report-October 29, 2010**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

*/s/ Nicholas N. Paul*  
NICHOLAS N. PAUL